Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Second Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana	)	CC Docket No. 98-121

REPLY COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

Pursuant to the Public Notices issued July 9, 1998, and July 23, 1998 (DA 98-1364 and DA 98-1480), the Association for Local Telecommunications Services ("ALTS") hereby files its Reply Comments in the above proceeding.

ARGUMENT

The Evaluation of the United States Department of Justice and the Comments of the non-RBOC private participants in this proceeding are unanimous in their conclusion that, although BellSouth has made some progress in the several months since the Commission last considered a Section 271 application in Louisiana, it has not yet satisfied the procedural or substantive requirements of section 271 of the Telecommunications Act of 1996, 47 U.S.C. § 271. It has not satisfied the procedural requirements because it has failed to show either Track A or Track B compliance, and it has not satisfied the substantive requirements because it has satisfied neither the fourteen point checklist nor the public interest test.

It would be a grave mistake were the Commission to grant the pending application in light of the compelling information submitted and concerns raised by the commenters relating to, among other things, the BellSouth operations support systems, the failure to adequately provision unbundled network elements, inadequate provisioning of physical collocation and the absence of firm rates for certain actions necessary for collocation, and the absence of performance standards backed by self-executing remedies. The extremely small number of lines in Louisiana served by competitive carriers is ample indication that the Louisiana market is neither fully nor irreversibly open to competition.[1] For these and other reasons, the Commission cannot legally grant the pending application.

I. BELLSOUTH HAS NOT SATISFIED THE REQUIREMENTS FOR A TRACK A APPLICATION.

As ALTS pointed out in its initial comments, there is no predominantly facilities-based wireline competitive carrier (or carriers) offering residential and business service in Louisiana. And, despite BellSouth's assertions to the contrary, PCS has not somehow magically become a "competing provider of telephone service" in the six months since the initial Louisiana

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[1] Although the Louisiana Public Service Commission argues that "[c]ompetition is alive and well in the State of Louisiana" (Comments at 8)it is clear that there has been no erosion of BellSouth's control over the local market. Facilities-based CLECs serve well less than 0.2% of the market in Louisiana (less than one in five hundred lines) and all competitors (including resellers) serve only about 2% of the market.

application was rejected just because a PCS provider has begun an advertising campaign that tries to lure wireline customers to its PCS service.[2] Use of the terms "competitor" and "competing" in the statute clearly infer a provider of service that could affect, in much more than a niche market, the RBOC's embedded market.[3] The handful of persons that BellSouth was able to identify that subscribed to PCS in lieu of traditional local exchange service could not and have not affected BellSouth's embedded market.

II. BELLSOUTH HAS NOT SATISFIED THE FOURTEEN POINT CHECKLIST.

A. Operations Support Systems

With respect to the 14 point competitive checklist, there are a number of areas in which the Commission cannot find that BellSouth has complied with the requirements. For the members of

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[2] Even the Department of Justice, which professes to defer to the Commission on whether PCS providers satisfy the requirements of section 271(c)(1)(A), notes that "it is clear even from BellSouth's submission that the vast majority of consumers do not consider PCS to be a close substitute for wireline local exchange service, and that PCS competition . . . does not provide the full range of benefits we would expect from competitive local markets." DOJ Evaluation at note 9.

[3] The Commission has stated that the use of the term competing provider suggests that "there must be an actual commercial alternative to the BOC." SBC Oklahoma Order at 14. This definition requires a determination of whether there are choices available to consumers. The fact that only a very small number of consumers (less than a dozen) may have ordered PCS in lieu of wireline service also shows that they do not view PCS as a commercial alternative to wireline service.

ALTS perhaps the most important of these is in the provision of nondiscriminatory, reliable and fully functioning operations support systems. Most of the comments submitted in this proceeding admitted that in some areas BellSouth has made progress in its operations support systems; at the same time many of the comments related numerous remaining problems that must be fixed prior to grant of a section 271 application.[4] In fact, improvement in some areas has been accompanied by backsliding in other areas.[5]

In addition to the fact that a large percentage of orders and functions are still processed manually[6] and that there are reliability problems with the current BellSouth OSS, as a number of competitors noted, OSS compliance continues to be a moving target.[7] ALTS and its members fully realize there will always be on-going refinements to any software system. However, the Commission should not grant any application until it has

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[4] See, e.g., Comments of MCI at 43-60 (filed August 4, 1998); Comments of e.spire Communications at 29(filed Aug. 4, 1998).

[5] See, e.g., Comments of AT&T at 5, 47; Affidavit of Christopher Rozycki attached to ALTS' initial Comments: "[g]enerally, an order submitted to BellSouth via EDI takes one to two days longer than a faxed order."

[6] See Comments of e.spire Communications, Inc. at 35; Comments of MCI at 45-47.

[7] As MCI noted, "BellSouth's OSS remains a work in progress." MCI Comments at ii (filed Aug. 4, 1998).

satisfied itself that the systems as they currently operate are good enough and workable enough to meet the legal standard established in the Michigan 271 Order, and that changes to the systems generally will be refinements, rather than whole new processes. ALTS' point here is not to discourage advancements and improvements; rather it is simply to point out that BellSouth's wholesale, on-going system changes that require competitors to expend considerable (and seemingly unnecessary) resources to modify their systems constitutes facial non-compliance with the OSS checklist requirement.[8] Furthermore, the on-going changes in the current systems make testing extremely difficult. In a real world demonstration of Von Heisenberg's uncertainty principle, the rapid changes in BellSouth's system have made an accurate assessment of their performance at a particular point in time -- the date of the current application, for example -- virtually impossible.

B. Provision of UNEs

The Commission recently revisited the provisions of section 251, and, specifically, its requirements relating to the provision of unbundled network elements. The Commission held that section 251(c) applies fully to network elements used to

[8] As noted in the affidavit of Christopher J. Rozycki attached to ALTS' initial Comments in this proceeding, BellSouth has introduced several new versions of EDI software. CLECs have been given only 90 days to convert to the new versions of EDI, and have no choice but to do so because BellSouth has stated that it will not continue to support the previous versions.

provide high speed data services and to network elements used to provide plain old telephone service (or "POTS").[9] The Commission stated that, pursuant to Section 251(c)(3) of the Act, incumbent LECs must provide to CLECs unbundled loops capable of transporting high speed digital signals including loops provisioned through remote concentration devices such as digital loop carriers ("DLCs").[10]

BellSouth has, however, refused to provide CLECs with nondiscriminatory access to such loops, xDSL facilities, or the DSLAM as unbundled network elements, and has, instead, forced competitors to use inferior alternative facilities. Thus, BellSouth is clearly not satisfying the requirements relating to the provision of UNEs that is a prerequisite to grant of a Section 271 application.[11]

C. Collocation

As is noted in the application and in many of the comments in this proceeding, BellSouth has provided only two physical collocations and six virtual collocations in Louisiana to date. A significant number of collocation requests remain outstanding.

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[9] In re Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Dkt No. 98-147 et al. (Report and Order and NPRM released August 7, 1998).

[10] Id. at paras. 52-54.

[11] For a thorough discussion of BellSouth's responses to the provisioning of UNEs necessary for the provisioning of high speed data services see the Comments of MCI in this proceeding.

As noted by a number of commenters, collocation requirements and specifications are primarily detailed in BellSouth's non-binding handbook, which it is free to revise or change at any time. Thus, the track record does not exist to support a Commission determination that collocation, for those carriers that want it, is fully available in a nondiscriminatory and reasonable manner and in compliance with the various requirements of Section 251.

D. Pricing

The Department of Justice and numerous parties have demonstrated in their comments that BellSouth's prices for interconnection, at least those which currently exist, bear little relation to the forward-looking cost standard mandated by the Act.[12] Furthermore, the prices at which BellSouth will offer collocation and other UNEs remains highly uncertain. BellSouth continues to fail to commit to specific pricing for space preparation fees, fees which the Commission has already found should be identifiable and quantifiable.

The only appreciable defense BellSouth musters for the pricing defects in its application is to hide beneath the Eighth Circuit Court of Appeals' ruling in the Iowa Utilities Board case[13] that the Commission cannot mandate or conduct an

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[12] DOJ Evaluation at 18-26; MCI Comments at 74-83; and AT&T Comments at 63-67.

[13] Iowa Utilities Board v. Federal Communications

(continued...)

independent review of the prices under which various network elements and interconnection is offered.[14]

Putting aside whatever conflict with its mandate the Eighth Circuit may have perceived in the Commission's Michigan Section 271 Order (a conflict that will be resolved, one way or another, with the Supreme Court's upcoming decision), it is patently clear that a grant of the application cannot occur unless BellSouth has demonstrated to this Commission, and not just the Louisiana PSC, general compliance with the cost-based pricing standard of Section 252(d)(1). At the very least this means there must be cost-based prices established and justified for unbundled network elements and collocation. Even if ultimately the Commission is found not to have the authority to set or require any particular rate or costing principles and processes, it still must find compliance with the costing principles of the Act prior to grant of a section 271 applications.

But there is no need in the present case for the Commission to mark out the proper borders of its pricing review authority under the Eighth Circuit's mandate, because BellSouth has failed to offer pricing evidence sufficient to comply with even the most cursory pricing role. The simple fact here is that there are no

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[13](...continued)
Commission, 120 F.3d 753 (8th Cir. 1997), cert. granted, (Jan. 26, 1998).

[14] BellSouth Brief at 37.

BellSouth prices established or set for some elements of collocation, and there is an significant appeal pending relating to BellSouth's pricing of UNEs.[15]

The Department of Justice clearly feels that an evaluation of BellSouth's pricing is both necessary and appropriate, and concluded, among other matters, that the Louisiana PSC's decision not to adopt geographically deaveraged costs produced "above-cost prices for loops in densely populated areas."[16] Unfortunately, after locating this significant pricing error, the Department went on to conclude that "we do not believe that geographic deaveraging must necessarily take place immediately, before section 271 authority can be granted."[17] With all due respect, this approach fails to recognize Congress' mandate that checklist compliance precede any in-region long distance authority.

Accordingly, and in full compliance with the Eighth Circuit's mandate, the Commission should find that BellSouth has failed to submit even a prima facie case of pricing compliance.

E. Performance Measures

In June of 1998, the Louisiana Public Service Commission

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[15] American Communication Services of Louisiana, Inc., et al. v. BellSouth Telecommunications, et al., Civ. Action No. 98-105-A-M (M.D. La filed Feb. 5, 1998).

[16] DOJ Evaluation at 21.

[17] Id. at 22.

modified the approved BellSouth SGAT to adopt interim performance measurements. While this is an improvement over the previous lack of any performance measures, the interim nature of the measures, the lack of any experience under these parameters, and the absence of any self-executing enforcement procedures, mandates that the Commission reject the application. In addition, there are a number of critical measurements that the Commission has indicated are important for determining compliance with the Act that are not included in the Louisiana interim reporting requirements.

CONCLUSION

For the foregoing reasons, the second BellSouth Application for In-Region InterLATA authority in Louisiana must be denied.

Respectfully submitted,

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August 28, 1998

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply Comments of the Association for Local Telecommunications Services was served August 28, 1998, on the following persons by first-class mail or hand service, as indicted.

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